



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

the buyer has paid the draft and taken the bill of lading in the belief that he was getting such goods as he had ordered; so upon discovering his mistake of fact he should be allowed to rescind. This ground of recovery, however, has been held insufficient even when the bill of lading has in fact been forged, for the reason that the bank makes no representations as to the goods covered by the bill of lading. *Goetz v. Bank of Kansas City*, 119 U. S. 551. *Leather v. Simpson*, 11 L. R. Eq. 398. See DANIEL, NEG. INSTR., § 1734.

The principal case seems not only incorrect on principle, but likely to produce hardship in its practical application. In some cases the results might be exceedingly harsh. For example, since by the general rule the measure of damages for breach of warranty is the difference between the value of the goods as warranted and the actual value of the goods delivered, the damages might in some instances be more than the amount received by the bank. See SEDG. DAM., § 762. There is no authority directly opposed to the principal case; but those cases where recovery by the acceptor of the draft is denied although the bill of lading has been forged, seem in principle irreconcilable with it. The case is significant as showing the growth of what is deemed to be an unfortunate doctrine in the law.

**SPECIFIC PERFORMANCE OF CONTRACTS TO PERFORM CONTINUOUS ACTS.**—By a recent decision in South Carolina a mandatory decree compelling a defendant to build and maintain a railroad station and keep a resident agent there was affirmed. The court thus not only gave specific performance of a contract to build, but also required the performance of continuous acts. *Murray v. Northwestern R. R. Co.*, 42 S. E. Rep. 617. This, it is often said, a court of equity will not do.

The reason why courts of equity will not give specific performance of contracts to build is commonly stated to be that they lack the power. See POMEROY, CONT., 2nd ed., §§ 307, 312. The real reason, however, would seem to be that there usually is a sufficient remedy at law; for the plaintiff can get damages and with them employ another contractor. See *Errington v. Aynesly*, 2 Bro. C. C. 343. When this reason fails, as it does in cases where the structure is to be on the land of the defendant and consequently no money damages will enable the plaintiff to erect it, a decree for performance issues. *Mayor v. Emmons*, [1901] 1 K. B. 515. The specifications as to the nature of the building must of course be reasonably definite. *Mayor v. Emmons*, *supra*. This relief, however, should not be deemed confined to cases where the plaintiff has granted land to the defendant as consideration for a promise by the defendant to build thereon, as is sometimes stated, for the relief is based on the broad doctrine that there is no adequate legal remedy. See *Stuyvesant v. Mayor*, 11 Paige (N. Y.) 426. These cases are but another application of that fundamental principle, and should not be considered exceptional.

As to the performance of continuous acts there is considerable conflict of authority. The majority of the decisions declare that a court of equity will not compel a defendant to perform a contract which requires the continuous employment of people, since a series of orders and a general superintendence would be necessitated. *Powell Duffryn Co. v. Taff Vale R. R. Co.*, L. R. 9 Ch. App. 331; *Blanchard v. Detroit Co.*, 31 Mich. 43. But the difficulty of enforcement seems to be exaggerated. To issue a series of orders

is no more than a court of equity is called upon to do whenever it undertakes to run a railroad by a receiver, and as to superintendence, the plaintiff may be depended upon jealously to take care of that. That equity may well give relief in such cases has been recognized in a number of decisions. *Joy v. St. Louis*, 138 U. S. 1; *Wolverhampton Co. v. London Co.*, 16 Eq. 433. They represent decidedly the better view, and are authority for declaring the principal case correct.

Where the contract to be enforced is, as in the principal case, that of a public service company, another point sometimes has to be considered. A railroad being a common carrier has duties towards the public. Any contract, therefore, which would seriously interfere with these duties a court of equity, in the exercise of its discretionary powers, should not enforce. Thus, where the full performance of the railroad's contract would hinder or endanger the public travel, the plaintiff should be left to his action at law. *Conger v. N. Y. Co.*, 120 N. Y. 29. And where the contract is to build a station at a particular point and at no other, since the free consideration of the public's convenience is thereby prevented, relief should be refused in equity, and for that matter, it seems, at law. *Williamson v. C. R. I. & P. R. R. Co.*, 53 Ia. 126. The principal case which involves no such question seems to have been correctly decided on principle, and is believed to represent the modern tendency of the law.

**RULES GOVERNING THE CREATION OF CONTINGENT REMAINDERS.** — In spite of the vast learning that has from the earliest times been brought to bear on the law of real property, to make its rules and the reasons for them clear, several points have remained the subject of controversy. One point of dispute is whether there co-exists with the rule against perpetuities a separate and independent rule, that although an estate may be limited to an unborn person for life, a remainder cannot be limited to the children of such unborn person. In 1890 the Court of Appeal held that there was such a rule. *Whitby v. Mitchell*, 44 Ch. D. 85. Recently the Chancery Division refused to apply the rule to a similar limitation of personalty. *In re Bowles*, [1902] 2 Ch. 650. The decision is clearly correct, for there is existing authority that personalty may be appointed to an unborn child for life with remainder to unborn children. *Routledge v. Dorril*, 2 Ves. Jr. 357. Though the court in the principal case was satisfied to rest its decision on that authority, it questioned *obiter* the necessity for any rule other than the rule against perpetuities to govern the creation of remainders whether of realty or personalty.

Mr. Joshua Williams, upon whose authority the Court of Appeal relied in *Whitby v. Mitchell*, *supra*, was of opinion that the creation of contingent remainders is governed, not by the general rule of remoteness, but by an independent rule, namely, the rule against a possibility on a possibility. WILLIAMS, REAL PROP., 6th ed., 245. Professor John C. Gray has expressed the opinion that the creation of contingent remainders is, like the creation of other future interests, governed by the rule against perpetuities. GRAY, PERPETUITIES, §§ 285, 298. Mr. Justice Kay believed that it was governed by both rules. *Re Frost*, 43 Ch. D. 246, 253, 254.

The rule that a remainder to be good must depend on a common possibility, and not on a double possibility, was first enunciated by Chief Justice Popham in *Rector of Chedington's Case*, 1 Co. 153 a, 156 b. This